

CIVIL AND CRIMINAL PRACTICES AND PROCEDURES

A. Commencement of Action and General Procedures

1. Initial Status Conference

In matters regarding the initial pretrial conference and initial scheduling order, Judge Tinder advises attorneys to refer to Local Rule 16.1. Pursuant to this rule, the initial pretrial conference is held no later than 120 days after the complaint has been filed. Counsel will generally be required to confer and prepare a case management plan prior to the initial conference. The district's guidelines for uniform case management plans can be found on the court's website (www.insd.uscourts.gov). This conference will ordinarily be conducted by the assigned magistrate judge.

2. Initial Scheduling Order

The initial scheduling order will set the initial pretrial conference with the assigned Magistrate Judge and will indicate that the conference and the case management plan must address the parties' contentions, a discovery schedule, a date for trial, a schedule for the disclosure of witnesses and the possibility of ADR or other settlement, and other matters pertinent to the case.

3. Policy Concerning Contacts with Judge and Clerks

Ex parte contact with Judge Tinder is not permitted. Nor are attorneys allowed to discuss matters regarding a pending case with the judge's law clerks. Telephone or in person conferences with all counsel participating are easy to schedule, even on an ad hoc basis, so there should be no need for ex parte communication. Conferences may be requested by filing a motion or calling the Judge's Administrative Assistant or Courtroom Deputy Clerk.

4. Motions and Briefs

Extra copies of motions and briefs are not wanted unless a specific order requiring them is issued. Pursuant to Local Rule 7.1(b), briefs and memoranda must not exceed 35 pages; reply briefs are limited to 20 pages.

B. Pretrial Procedures-Civil

1. Motion Practice

No specified days or times are set for motion practice. The court notifies all attorneys and pro se parties of hearings. Oral arguments of motions are not ordinarily held, but will be set, even without request, if the court determines that it would be helpful. The court tries to rule on emergency motions and uncontested motions as soon as possible. All other motions are addressed in order of priority.

2. Settlement

Judge Tinder encourages the use of any ethically proper method of ADR. The court will consider any reasonable suggestions from counsel regarding ADR in any case. The court ordinarily refers ADR and settlement conferences to a magistrate judge.

3. Discovery Motions

Pursuant to Local Rule 37.1, any discovery motion may be denied unless counsel certify their attempts to resolve the matter in dispute. The judge ordinarily refers discovery disputes to the assigned magistrate judge.

4. Pretrial Conference/Pretrial Orders

The district's uniform case management plan requires that a final pretrial conference be held and describes the projected schedule. Other interim conferences may be requested by counsel at any time (see 3. Policy Concerning Contacts with Judge and Clerks) and ordinarily will be conducted by telephone. The case management plan ("CMP") contains the schedule of pretrial filings that is sometimes referred to as a pretrial order in other courts. No specific pretrial order beyond the CMP is ordinarily issued.

C. Pretrial Procedures-Criminal

1. Bail Procedures

Ordinarily, a magistrate judge initially determines the issue of pre-trial release. The process for appealing the magistrate judge's release or detention decision is governed by 18 U.S.C. § 3145. A transcript of the hearing before the magistrate judge should be ordered by counsel when review is sought.

2. Discovery Procedures

A standard discovery order, tracking Fed. R. Crim. P. 16 is issued in all cases.

Pursuant to 18 U.S.C. § 3500, Jencks Act material must be disclosed after a government witness testifies on direct examination. However, earlier disclosure aids plea negotiations and orderly trials, and is, therefore, strongly encouraged. A detailed discovery ruling issued in a criminal case by the judge can be found in the case of *United States v. Williams*, 792 F. Supp. 1120 (S.D. Ind. 1992).

3. Pleas

A written notice of intent to plead guilty should be filed at least one month before the scheduled trial date. A "Petition to Enter a Plea of Guilty" form should be obtained from the clerk of the court. Pleas of guilty are ordinarily entered at a hearing approximately

seventy-five days prior to the sentencing.

D. Trial

1. Trial Date

In civil cases, the court confers with counsel before selecting a trial date. This is ordinarily done either during the initial pretrial conference after reviewing the CMP or after rulings on dispositive motions have been completed. Continuances are governed by Local Rule 16.3. In criminal cases, a trial date is determined by the court based on the requirements of the Speedy Trial Act, 18 U.S.C. § 3161, et seq. Continuances are governed by Criminal Rule 7.1 of the Local Rules.

A written notice of trial date is sent to counsel in all cases.

2. Trial Briefs

Trial briefs are helpful, strongly encouraged, though not required, and should be filed in accordance with the schedule in the court's suggested guidelines in the CMP.

Surprises at trial are unfortunate and a good trial brief can help avoid surprises.

3. Voir Dire

Judge Tinder's process for conducting voir dire varies. Sometimes the judge conducts voir dire, sometimes counsel do, and sometimes both do. Proposed questions should be submitted in writing per the Case Management Plan. All peremptory challenges are exercised simultaneously in writing. The entire venire is questioned during voir dire. The prospective jurors are seated in the order of the random draw and you can exercise peremptory challenges in any order you want.

4. Decorum

Generally, counsel should conduct examinations and arguments from the podium. Witnesses, jurors and opposing counsel should be addressed in a civil and professional manner. Counsel need not ask the judge's permission to approach a witness.

5. Opening Statement

Depending on the length of the case, time limits on opening statements may be set. Opening statements should be made from the podium. Counsel may use exhibits in opening statements if they are certain to be admitted at trial.

6. Stipulations

In criminal cases, all defendants and all counsel must sign written stipulations.

Stipulations where possible are strongly encouraged in all cases so that trial is held only on truly disputed issues of fact.

7. Marking Exhibits

All parties must mark their own exhibits before the start of any hearing or trial. Counsel must exchange exhibits prior to trial. The court has no preference on the style or form of markings (numbers, letters, stickers, etc.) but strongly encourages the use of a system that keeps the exhibits organized in a simple and logical manner and the use of a consistent system of marking exhibits in deposition, pretrial hearings and at trial so that a single identifying mark can appear on each exhibit.

8. Reading of Depositions

Encourages counsel to read deposition summaries rather than boring the jury by reading a deposition or playing a videotaped deposition at trial. If the matter is a bench trial, Judge Tinder prefers to read depositions to himself, without the assistance of readers.

Actors have been permitted to be used in prior trials, without much success.

9. Use of Experts

Qualifications of an expert witness are confirmed by direct testimony of the expert.

Challenges or proffers seeking a determination of admissibility of expert testimony under Fed. R. Civ. P. 702 should be raised prior to trial through a motion in limine.

10. Use of Videotapes

Allows counsel to present videotapes at trial. Videotapes should be edited so that only admissible portions are played to the jury without interruption.

The court is equipped with a reasonably complete visual and audio display system which includes a document camera, video and audio player and hook up for Power Point type displays. A description of this VEPS system can be found on the court's website and training to use the system can be obtained by contacting the Court's Information Systems staff at 317-229-3737.

11. Objections

If possible, objections should be raised prior to jury trials through a motion in limine. If a matter could not have been anticipated prior to trial, the objections should be made while the jury is on a break. If that cannot be done, a brief objection should be made orally at the time the evidence is offered at trial. A brief response will be allowed, if necessary, prior to the ruling. The court strongly discourages the use of oral objections

and responses in the presence of a jury as a means of presenting argument to the jury or advice to the witnesses.

12. Daily Transcripts

Does not require daily transcripts, but encourages the parties to order transcripts from the court reporter. Finds daily transcripts especially helpful in bench trials.

13. Closing Statements

Prior to summation, the judge holds a conference on jury instructions, specifically, a formal on-the-record conference as required by Fed. R. Civ. P. 51 and Fed. R. Crim. P. 30. Closing statements should ordinarily be made from the podium. Time limits on closing statements may be imposed, depending on the needs of the case.

14. Jury Procedures

Usually permits jurors to take notes in trials of substantial length. Jurors may inspect exhibits in the jury room. The visual display system discussed above is ordinarily used to show exhibits to the jury during trial. Exhibits may be handed to the jury during trial only if that is the most efficient manner of displaying the exhibits under the circumstances. Juror notebooks are usually bulky and a waste of space and time.

In some civil cases, jurors are permitted to submit written questions to follow up on the oral examination of witnesses by counsel. If this procedure is to be allowed, it will be discussed in detail with counsel in advance.

Judge Tinder's jury instructions are projected via the visual display system to enable jurors to read the instructions as the judge reads them aloud. Jury instructions are read before final argument. The judge also sends the instructions in writing, along with the exhibits, into the jury room at the start of deliberations.

15. Sentencing Practices

A detailed presentence report is prepared by the Probation Office as required by Fed. R. Crim. P. 32(b), and is disclosed to counsel prior to sentencing on a schedule contained in a standing district court order (available on the court's website). The probation officer also submits a written confidential sentencing recommendation which is not ordinarily disclosed. However, if that recommendation reflects a departure from standard guidelines, the judge will disclose the reasons for a recommendation of departure.

16. Miscellany

Jury service is a substantial burden on citizens. They are taken away from their families, jobs and other things to serve as jurors. They are required to travel great distances

(sometimes as much as 100 miles each way) to serve. Consequently, it is our duty to insure that the time the jurors spend at court is useful, efficient and productive. Counsel will notice that Judge Tinder will encourage them to be well prepared and to have an efficient plan for trying their case.

Jurors are very bright, alert people. They get the point the first time it is made. They don't need to hear tedious testimony about things that are not in dispute. Counsel should not waste their time by being redundant or unfocused, but should communicate the information they need to them quickly and efficiently, and they will do the right thing.

Also, the comments contained in this statement of practices and procedures are made in response to questions posed in a request for information by Aspen Publishers, Inc. for its publication *Directory of Federal Court Guidelines*. These comments are not a rigid set of rules imposed for purposes of practice in this court only. You will notice that these comments make frequent reference to the local rules of this district court. In order to be comfortable with the procedures of the courts in this district, there is no substitute for becoming familiar with the local rules of this district and acting in compliance with them. These local rules are designed to standardize the procedures in all of the courts in this district and to maintain as much similarity between procedures and practices here and those of other federal courts throughout the country as possible. The Uniform Case Management Plan for civil cases in this district was designed with similar goals in mind. Judge Tinder is a strong proponent of these goals.

Finally, these comments are intended to encourage the efficient presentation of matters through the conduct of proceedings with the use of good common sense. They are not intended to make your presentation of matters in this court complex or difficult. If you have a plan in mind for how you want to do something and your plan is logical and well organized, you will have no difficulty in making that presentation. If you find yourself asking how the judge wants to have something presented, you probably haven't thought enough about how you want to make the presentation. It is unlikely that the judge would know how he wants you to present a matter because he cannot know what you are trying to achieve. If, after careful consideration, you still wonder how a matter should be presented, you should tell the court what plan or plans you have for the presentation and ask whether any of your plans would not be permitted.